BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

IN THE MATTER OF DEVELOPING A	)	CC Docket No. 01-92
UNIFIED INTERCARRIER	)	DA 06-1510
COMPENSATION REGIME	)	

COMMENTS OF THE UTAH DIVISION OF PUBLIC UTILITIES

February 01, 2007

TABLE OF CONTENTS

Before the
Federal Communications Commission
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EXECUTIVE SUMMARY

The Utah Division of Public Utilities (UDPU), Investigative Staff for the Utah Public Service Commission submits these reply comments on the Missoula Plan (Plan) in response to the Federal Communications Commission (FCC) Public Notice released on July 25, 2006 and those comments filed by the Industry and State Commissions on October 24, 2006.

In reviewing the Missoula Plan the UDPU has ascertained that the Plan is overly broad, vague and undefined, falling short in establishing cost-based rates and a workable solution for inter-carrier compensation. More importantly, if the FCC chooses to adopt the Plan, consumers in rural America may experience "rate shock" due to the increase of the Subscriber Line Charge (SLC) and the inevitable increase in both federal and state USF surcharges. In essence, the Plan transfers the cost of access and interconnection now paid by the inter-carrier telecommunication providers, to the end-user. The reality is that if the Missoula Plan is adopted, consumer rates for most rural ILECs in Utah may rise well above the affordable rate of $16.50 that has been established by the Utah Public Service Commission, and may possibly rise above the Federal Benchmark rate in many Utah rural exchanges.

Furthermore, the Missoula Plan may be anti-competitive when the definition of the "Edge" is applied to an operating CLEC. The "Edge" meet point is not in itself anti-competitive for new CLECs entering the market, but may become a barrier to competition for CLECs already operating in Utah. These CLECs have been certificated by the Utah Public Service Commission, have negotiated interconnection agreements utilizing cost-based wholesale rates, and have previously designed and constructed telecom networks between themselves and the interconnecting ILEC. If the Missoula Plan is adopted, the definition of the "Edge" as it relates to the access tandem, will force the operating CLECs to expend valuable resources and expenses to construct new telecommunications networks to meet the "Edge" criteria.

Clearly the Plan ignores not only state commission orders, that have been drafted to be in compliance with the 1996 Act, but also ignores the

NARUC principle and guidelines created to protect rural consumers as set forth in The Act. Furthermore, the Missoula Plan violates section 252(d) (2) of The Act, which outlines the use of TELRIC standards to establish costs for interconnection and unbundled network elements. The arbitrary costs proposed in the Missoula Plan are not cost based as ordered by Congress nor, it appears, can they be validated by the designers of the Plan.

In spite of the problems with the Missoula Plan as a whole, the UDPU does support Section (2)(D) of the Plan that focuses on Phantom Traffic Identification. The UDPU believes that this section is a notable first step towards assuring that those who use the public network to terminate calls are compensating those providers who own the network. Nonetheless, there are also downfalls to this section, as it is written. The Plan is vague on how both the transit and terminating traffic will be identified, and the associated penalties for violation are feeble and will be ineffective.

Nonetheless, the UDPU commends the efforts of those who put forward a Plan that suggests possible methodologies to aid in the reform of the antiquated inter-carrier-compensation rules and regulations. The Plan envisions a framework which will encourage industry participation to further enhance an approach that may eventually develop into a workable reform to inter-carrier compensation for all telecommunications providers. The participant's collaborative effort to address the many complex issues surrounding inter-carrier compensation is commendable.

In summary, the UDPU recommends that the FCC reject the adoption of the Missoula Plan as written. In advance of adopting the Missoula Plan, or for that matter any other Plan, the FCC must evaluate and weigh every assumption and its impact on the existing telecommunications network, competition, and more importantly the consumer. It appears that a thorough investigation, as discussed above, has not been conducted on the Missoula Plan.

Until such time that an overall Intercarrier Compensation Plan is developed, the UDPU suggests that the Commission concentrate on more pressing issues such as resolving the "Phantom Traffic" problem rather than hastily establishing interim rates and policies for interconnection that may result in increased rates for Track 2 and Track 3 consumers, and result in a windfall for Track 1 carrier's at the expense of its rate payers.

DISCUSSION

Effect on Rural Consumers – Rates

The traditional view of regulation is that it serves the public interest by protecting consumers who do not have reasonably priced and readily available choices in the market. The Missoula Plan violates this basic principle by promoting the concept that companies increase SLC charges concurrent with increases in the Federal Communication Commission (FCC) increases in the USF surcharge to support new programs. These simultaneous events may result in "rate shock" or unreasonable and unaffordable rates for rural end-users.

The FCC has stated that it does not want to jeopardize the ability of rural consumers to receive service at reasonable rates. The Plan, as written, masks the overall outcome on consumers.[1] It not only minimizes the effect of raising the SLC charge, but also underestimates the overall effect on rate payers when the Federal and State USF surcharges are raised to cover the Early Adopter and the Federal Restructure Mechanism. Moreover, the eventual consequence is that as rates increase consumers may choose to leave the rate-of-return ILEC and obtain service from another source. Utah rural ILECs are concerned that as consumers leave or change providers, company earnings are eroded causing further dependency on increases in both federal and state USF. Maintaining revenue for rural Utah providers is critical to the stability of existing and future landline infrastructures capable of providing advanced services and technologies as promoted by state legislators, the FCC, and State Commissions. One of the end results of adopting the Missoula Plan is that the USF is increased and becomes a revenue replacement. Concurrently, the cost of access is disproportionally transferred to the ratepayers.

In Utah, increasing the SLC charge as put forward by the Plan violates the Legislature's and Utah Public Service Commission's intent to set affordable rates for all rate-of-return companies based on intensive audits that determine not only rate base, but also the State USF withdrawal that the companies will receive. State Commissions have readily available resources to assist them in the determination of obligatory rate increases, decreases, and anti-competitive issues that could affect the rate payer. To avoid a negative impact on ratepayers, it is imperative that State Commissions retain jurisdiction over the establishment of rates.

Furthermore, in an attempt to keep basic rates low, rural LECs now have the option to increase rates on other tariff services, rather than raising

[1] CC Docket No. 01-92 Further Notice of Proposed Rulemaking – March 3, 2005, Paragraph 32

the basic rate to an unreasonable and unaffordable level. By using creative company strategies, subscribers may be discouraged from going to a cellular or VoIP competitive provider who may be offering lower rates. Basically, the Missoula Plan, as written, does away with creative marketing initiative and strategies and forces the telecom providers to increase basic rates.

The FCC has stated that it desires to have a plan that offers expanded choices and lower rates to consumers.[2] Implementation of the Missoula Plan does the exact opposite; it increases rates for rural consumers and affords unsustainable increases in USF monies to compensate rural companies. Moreover, the Plan does away with all State Commission oversight which is in direct conflict with Utah statutes and rules. Respectfully, the UDPU agrees with other state commissions that the Missoula Plan, as written, will jeopardize affordable rates for rural consumers and limit state commission oversight. The Plan should be rejected.

In the event that the FCC chooses to adopt the Missoula Plan, it should consider a stipulation that the SLC charge be listed as a separate line item on the subscriber's bill.

Phantom Traffic

The issue of Phantom Traffic is problematic for rural LECs with the introduction of new technologies such as VoIP, wireless, IP, etc. The problem is that many of the new telecommunication providers are not populating the signaling information required to identify the company that is passing the call to the Public Switched Telephone Network (PSTN). Additionally, in Utah, it has been alleged that intermediate-carriers strip the signaling information from the signaling protocol before the call is sent to the terminating company. Both of these occurrences are known as Phantom Traffic.

Over the past two years the UDPU has been taking complaints and meeting with rural providers in Utah who have expressed concern that they are receiving and terminating unidentifiable traffic from primarily cellular and VoIP providers. Nonetheless, in compliance with Utah rules and statutes, the providers continue to terminate calls that have no billing identification. With no billing information, the rural ILEC is unable to bill the originating carrier. Loss in revenue to Utah rural ILEC's has been estimated to be hundreds of thousands of dollars each year. As a result the

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companies have had to take a financial loss or recover lost revenue from an increase in subscriber rates and/or request additional funds from the State and Federal USF.

Section V of the Plan addresses this issue of Phantom Traffic; nevertheless, it recommends a solution that is weak, vague and imprecise. Section V(b) of the plan states that a carrier must not alter the signaling information. Nevertheless, if the JIP (Jurisdiction Information Parameter) field has not been populated in the signaling protocol when the call is originated, the call will still successfully route through the PSTN to a landline subscriber. However, the terminating provider does not have the capability to identify the originating provider in order to bill for transporting the call through its portion of the network. As stated above, this phenomenon is resulting in a significant revenue loss to rural carriers in Utah every year. The simple solution is for the FCC is to develop a rule and non-compliance penalties that would require all telecommunications carriers including, VoIP and Wireless providers, to populate the JIP fields in the signaling format which identifies the originating point of the call and passes the information to the terminating carrier. More importantly, a severe penalty should be assessed to the intermediate carrier if the JIP code is stripped off when transiting the network. In either case, the rule should contain specific penalties for non-compliance. The UDPU supports Section V, C (4) (a) which states that the FCC should exercise its authority to assess forfeitures. As discussed above, it is imperative that the forfeitures be stringent enough to deter the behavior that the rural ILECs are experiencing in today's environment. Moreover, Section V,C(4)(c)(i) is a strong deterrent for undesirable behavior.

It is imperative that State Commissions continue to have jurisdiction over intrastate access calls so as to quickly resolve issues surrounding Phantom Traffic identification. Preemption of State authority, as has already been experienced, could continue to promote undesirable behavior at the local level due to federal regulatory delay in processing complaints. State Commissions and the FCC must mutually set guidelines in place to address Phantom Traffic using the methodology suggested in the plan as a beginning point. All telecommunication providers, including wireless and VoIP, must be required to include the JIP in the signaling protocol which is to be passed to both the terminating and transit telecommunication providers. Additionally, both state and federal Commissions must assess stringent penalties if rules are violated by either the provider or the transit carrier for both inter-LATA and intra-LATA traffic transporting across the network.

<u>Rate Development Based on TELRIC Principles</u>

The Utah Public Service Commission has spent over ten years establishing a competitive environment that is in conformance with the 1996 Act. One of its major tasks was setting wholesale and interconnection rates based on TELRIC principles for the RBOC and also for several rural ILECs. Parallel with rate establishment, the Utah Commission's objective was to balance rates so as not to cause a barrier-to-entry for competition or influence bypass by interconnecting carriers. Furthermore, the Utah Public Service Commission has gone to great lengths to hear and rule on interconnection agreements between all entities. These Utah interconnection agreements have been established using verifiable TELRIC based costs for interconnection, resulting in a vibrant and flourishing competitive environment in Utah.

In comparison, the Missoula Plan has entirely disregarded the authority and orders issued by state commissions. The Plan establishes a uniform rate structure that is not founded on TELRIC principles. The development of proposed rates in the Plan, violate the intent of Congress to ensure that rates cover cost. More importantly, based on conference calls held with the Plan designers, it appears that the uniform rates that were developed and proposed are based on unverifiable averages and costs. This methodology is troublesome to UDPU and many of the Utah telecommunication providers who have expressed concern.

The result of the termination rates as proposed by the Plan on carriers in Utah are as follows:

Track 1 - .0007 and .0005 : Results in a windfall for the RBOC.

Track 2 - .0005 : Is severely below current rate. Subscriber rates will increase or the companies will request an increase in federal and state USF withdrawal.

Track 3 - Changing intrastate rate to the higher interstate rate: allows the Track 3 provider to increase intrastate access without Commission approval. Rates not based on cost. May be anticompetitive.

Additionally, the UDPU strongly disagrees with the rates that are proposed for switching, transport, etc, as they were set without consideration to TELRIC principles and have similar impact on company earnings.

The UDPU believes that, if proposed rates are adopted without consideration of cost, the overall statewide result would be detrimental to consumers. The main objective of cost based rates is to assure that price setting does not unduly discriminate against any class of customers. To set uniform termination rates as proposed by the Missoula Plan, which ignores cost, may unfairly discriminate against some consumers, especially Track 2 consumers. To further explain, in some high cost areas, when rates are consistently set without consideration to cost, telecommunication companies may earn less resulting in higher capital costs in the long run. Higher capital costs may eventually be passed on to select consumers (rural) in the form of higher rates. In other areas, such as the RBOC service area, subscriber rates could be lowered due to higher termination rates. However, lower subscriber rates may become anticompetitive. Competitors will experience a lower termination rate but they may be unable to compete against the RBOCs lower subscriber rates. Additionally, transit traffic rates would be pushed higher above cost levels increasing ILEC revenues and raising CLECs cost of provider service to their customers. These are all issues that the Utah Public Service Commission would normally investigate.

Moreover, a major detriment to the Plan as written, is that it has no inducement to encourage those providers who receive a benefit from the lowering or elimination of access costs, to flow-through that profit to consumers in the form of lower rates. Expenses are reduced or eliminated but the carrier continues to charge consumer high rates that contain the expense of access. Once again the consumer is the injured party.

The UDPU encourages the FCC to consider the effect on consumers and telecommunication providers. To assure fair treatment, rates must be based on TELRIC principles as outlined by Congress. Additionally, the Plan should contain rules and penalties to address the circumstances when access rates are decreased or eliminated. A telecommunication provider that experiences the benefit of a lower termination rate must pass that savings on to consumers in the form of lower rates. More importantly, state commissions must retain jurisdiction over rate setting to assure that all consumers, CLECs and telecommunication providers experience fair and reasonable rates.

<u>"Edge" Interconnection Point</u>

Once again the Missoula Plan has not taken into consideration the full impact of its proposals. Under B. Establishment of Edges, 2 (d) (i), page 45, the Plan discusses the access tandem as an "Edge" designation for Track 1 carriers. In this section it states that the carrier cannot designate one of its

End Offices as an Edge, if that End Office subtends the carrier's own access tandem. This is a critical error or over-sight of the Plan.

To illustrate, when competition began to enter the State of Utah, all carriers were interconnected at the RBOC's access tandem. As the competitive providers gained customers and traffic increased the access tandem began to experience severe blockage. The RBOC attempted to solve the problem with numerous growth jobs but as the tandem neared total capacity it was necessary to take other precautionary steps to avoid blockage. After months of investigative technical conferences with the effected parties a resolution was agreed on. To alleviate the problem, the competitive providers had to reroute their traffic and interconnect at end offices that subtended the tandem. This was done when traffic reached a designated level.

To disallow the designation of an end office as an "Edge" will most assuredly cause blockage in the tandem and/or at the very minimum result in significant expense for the Track 1 carrier for the augmentation of the tandem as traffic increases.

Without government oversight this issue most probably would not have been resolved through collaboration. The Utah Public Service Commission acted as a facilitator until the matter was finally resolved.

Although many state commissions have approved or agreed to the "Edge" concept, impact of the detail has not been discussed. The UDPU encourages the FCC to review the detailed impact of the "Edge" design and its implication on the network of the Track 1 carriers.

<u>Summary</u>

In summary, the UDPU recommends that the FCC reject the adoption of the Missoula Plan as written. Staff suggests that the FCC concentrate on resolving individual issues such as "Phantom Traffic", rather than attempting to establish interim rates and policies for interconnection that may harm Track 2 and Track 3 consumers, and result in a windfall for Track 1 carrier's at the expense of its rate payers.